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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,685	04/17/2001	Jefferson E. Odhner	LUC 2-026-3	7184

7590

05/13/2003

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EXAMINER

LAVARIAS, ARNEL C

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 05/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/836,685

Applicant(s)

ODHNER ET AL.

Examiner

Arnel C. Lavarias

Art Unit

2872

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 April 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 8.
10. ☐ Other: _____

[Signature]

Primary Examiner

Continuation of 5. does NOT place the application in condition for allowance because: The Applicants' request for reconsideration does not place the application in a condition for allowance at least for the reason that the finality of the rejections made in Paper No. 9, dated 2/6/03, are justified in view of the amendments made to the claims by the Applicants in Paper No. 6, dated 12/16/02. The Applicants argue that the amendments made did not necessitate the new ground of rejections, and hence the Examiner did not have a basis for making the rejections final. The Examiner respectfully disagrees. As specifically pointed out by the Applicants' representative on Page 5 of the response in Paper No. 11, dated 4/30/03, "the invention as disclosed AND claimed should be thoroughly searched in the first action and references fully applied". The Applicants are directed to, for example, original Claim 1 (as presented in the original disclosure) which recites a movable diffractive optical element to generate output signal(s), and amended Claim 1 (See Claim 1 as amended in Paper No. 6, dated 12/16/02) which recites a movable diffractive optical element having a surface carrying a holographic diffraction grating including an array of facets, each of said facets carrying a diffraction grating(s) which are superimposed, each being angularly offset with respect to each other. The Examiner notes that the scope of the claimed movable diffractive optical element of original Claim 1 is sufficiently different than the scope of the claimed movable diffractive optical element of amended Claim 1, thus necessitating another search of the available prior art. A new reference (i.e. Mey et al.) was cited and a new rejection under 35 U.S.C. 103(a) using both Kompfner and Mey et al. was made. Thus, as per MPEP 706.07(a), the rejections were made final as being necessitated by Applicants' amendment to the claims.

Regarding the grounds of rejections in Paper No. 9, dated 2/6/03, the Examiner has not been persuaded by the Applicants' arguments since the claims as amended in Paper No. 6, dated 12/16/02, recite a source of input optical signal(s), i.e. one or more input signals, and one or more output station(s), and that both Kompfner and Mey et al. are directed to devices that both perform the function of redirecting light from one location to another using diffractive means. Additionally, the claims as amended only recite that the movable diffractive optical element distribute the output optical signal(s) among the output station(s), which the Applicants' representative has clearly pointed out in the figures on Page 11 of the response (See Paper No. 11, dated 4/30/03).

Regarding the information disclosure statement (IDS) of Paper No. 8, a proper statement as per 37 CFR 1.97(e) and appropriate fee authorization have been provided by the Applicant in Paper No. 11, dated 4/30/03. The IDS of Paper No. 8 has been considered by the Examiner.